

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

**FILED**

JAN 29 2018

CLAYTON JAMES McCLOSKEY,

Plaintiff,

vs.

BIG SKY SENIOR LIVING ON  
WATERFORD WAY, WATERFORD  
OPERATING, LLC, and JOHN &  
JANE DOES 1 - 5,

Defendants.

Clerk " District Court  
Montana  
18

No. CV-17-91-BU-SEH

**ORDER**

This case was filed in state court on December 20, 2016.<sup>1</sup> No Summons were issued and no service of summons and the complaint were attempted or effected before June 5, 2017, when Plaintiff filed an Amended Complaint (First Amended Complaint) in state court.<sup>2</sup> Summons was issued for the FAC on June 5, 2017, but no service of the amended pleading was effected before a Second

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<sup>1</sup> Complaint and Demand for Jury, Montana Second Judicial District Court, Silver Bow County, DV-16-437.

<sup>2</sup> Amended Complaint and Demand for Jury, Montana Second Judicial District Court, Silver Bow County, DV-16-437 ("FAC").

Amended Complaint was filed on September 11, 2017.<sup>3</sup> Summons was issued on October 20, 2017,<sup>4</sup> after the SAC was filed.

Defendants acknowledged receipt of Summons and waived formal service of process on November 10, 2017.<sup>5</sup> Notice of Removal was filed on December 7, 2017, 27 days after service was completed on November 10, 2017.

28 U.S.C. § 1446(b) provides:

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

Here, formal service, requisite to invocation of the 30-day removal period limitation in 28 U.S.C. § 1446, commenced on November 10, 2017. Removal filed 27 days later, on December 7, 2017, was timely.<sup>6</sup>

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<sup>3</sup> Second Amended Complaint and Demand for Jury, Montana Second Judicial District Court, Silver Bow County, CV-16-437 (“SAC”).

<sup>4</sup> Doc. 1-2 at 26.

<sup>5</sup> Doc. 1-2 at 28-29.

<sup>6</sup> See *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

ORDERED:

Plaintiff's Motion to Remand<sup>7</sup> is DENIED.

DATED this 29<sup>th</sup> day of January, 2018.

  
SAM E. HADDON  
United States District Judge

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<sup>7</sup> Doc. 9.